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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/552,586	04/19/2000	Michael Kochman	181/01332	4080

7590

12/16/2003

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

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DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/552,586

Applicant(s)

KOCHMAN ET AL. *CA*

Examiner

Victor K. Hwang

Art Unit

3764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 25 November 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 48-50.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet

Victor K. Hwang
Victor K. Hwang
Patent Examiner

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments are not convincing. Applicant argues that there is no teaching, suggestion, or motivation in the prior art to combine Bleeker and Cheng. Bleeker discloses a massage device using suction and driven rollers to stimulate body tissue of a user. Cheng discloses a massage device using infrared radiation in combination with a plurality of massaging devices (col. 1, lines 25-28). Infrared devices produce heat for stimulating the muscles as the muscles are massaged by motor-operated massaging devices (col. 1, lines 5-9). The Examiner sees Cheng as providing clear motivation to combine motor-operated massaging devices, such as the the Bleeker device, with infrared devices to provide heat for stimulating muscles as the muscles are massaged by the motor-operated devices. Infrared radiation falls within the 600 nm to 1500 nm wavelength recited in claim 50 and would inherently pass through the skin. Further support for the combination is provided by Henderson, which Applicant has not responded to. Henderson discloses a massage device wherein heat is applied in the treatment of cellulite, in combination with a roller massage device. Though Henderson is not a part of the formal rejection, it is further evidence supporting the combination of infrered devices with the Bleeker device.

Continuation of 10. Other: There were no proposed amendments filed after final. Claims 48-50 remain rejected under 35 USC 103(a) as being unpatentable over Bleeker et al. in view of Cheng..

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